stances surrounding the legislation, there is at least enough to be said for the view of the State court to prove the statute ambiguous, in which case the Supreme Court will exert itself to follow the interpretation of that court.

ASSESSMENTS UPON THE STATUTORY LIABILITY OF A NON-RESIDENT STOCKHOLDER.—Ch. 272, p. 315, Gen. Laws of Minn. of 1899, provides that in a receivership proceeding, if it appears that the assets of a corporation are insufficient to pay its debts, the court shall levy an assessment upon the statutory liability of all stockholders, and authorizes the receiver to prosecute actions therefor, whether a stockholder be within or without the state. Acting in pursuance of this statute, one Converse, the receiver of a bankrupt Minnesota corporation, brought suits against non-resident stockholders in the Wisconsin, Massachusetts and Federal courts, in all of which it was urged, among other defenses, that, not having been parties to the proceedings, no liability for the assessments there levied could ensue. This contention, founded upon the familiar doctrine that in an action upon a money demand, a personal judgment is without validity if rendered against a non-resident who did not appear, and upon whom no personal service of process within the State was made,[1] was adopted by the Supreme Court of Wisconsin in *Hunt* v. *Whewell*,[2] and has been followed in two recent decisions of the same court. *Converse* v. *Hamilton* (Wis. 1908) 118 N. W. 190; *Converse* v. *McCauley* (Wis. 1908) 118 N. W. 192. A contrary result has been reached by the courts of Massachusetts[3] and the United States,[4] following earlier decisions in New York,[5] and Massachusetts[6] with respect to a similar Washington enactment.[7] Although recognizing the doctrine of *Pennoyer* v. *Neff*,[1] the cases last mentioned deny, and with what appears to be the sounder reasoning, its applicability to proceedings of the character provided for by the laws in question.

Since legislation can have no effect beyond the limits of the State enacting it, one State can not impose a purely statutory liability upon stockholders resident in another State. But, inasmuch as the law is justified in assuming that a stockholder agrees to the provisions of the statute, according to which alone the corporation may contract, it is generally held—though courts have not been wholly consistent[8]—that one who takes stock impliedly undertakes liability to creditors as the statute directs.[9] As frequently stated, the liability is statutory in origin, but contractual in its nature.[10] Thus a cause of action upon this obligation is transitory.[11] The right of the legislature to increase his liability is denied by the constitutional provision against impairment of contract; the right to alter the procedure by which the liability may be made effectual is limited only by the "due process" clause.[4] Where a statute such as that of Minnesota is in existence when

[1]D'Arcy *v.* Ketchum (1850) 11 How. 165; Pennoyer *v.* Neff (1877) 95 U. S. 714.
[2](1904) 122 Wis. 33.
[3]Converse *v.* Ayer (1908) 197 Mass. 443.
[4]Bernheimer *v.* Converse (1907) 206 U. S. 516.
[5]Howarth *v.* Angle (1900) 162 N. Y. 179.
[6]Howarth *v.* Lombard (1900) 175 Mass. 570.
[7]1 Wash. Code §1511.
[8]The inconsistency appears only where the particular Statute of Limitations applicable is in question. McClaine *v.* Rankin (1905) 197 U. S. 154.
[9]Flash *v.* Conn (1883) 109 U. S. 371; Matteson *v.* Dent (1900) 176 U. S. 520.
[10]See 7 COLUMBIA LAW REVIEW 421, and cases cited.
[11]Whitman *v.* Bank (1900) 175 U. S. 559.

the stockholder takes the stock, a question of due process under that statute can hardly arise, for he is deemed to assent to the procedure prescribed, even, it is submitted, to giving consent to jurisdiction. On the latter ground, it might be argued, the Minnesota statute could be reconciled with the doctrine of *Pennoyer* v. *Neff*.[1] But prior stockholders have been held equally subject to its provisions,[4] and, as in such a case there is no voluntary consent, some other explanation must be found, applicable to both situations.

Courts which have held the assessments binding, reason from the well settled proposition that the members of such corporations, as well as the corporations themselves, are within the jurisdiction of the local court as far as is necessary for the determination of the rights and liabilities of the corporation and its members among themselves.[12] There is no difference in principle, it is said, between the liability for unpaid subscriptions running to the corporation, and the statutory liability running to creditors. That the doctrine of *Pennoyer* v. *Neff*[1] is not impeached by assessments for unpaid subscriptions is unquestioned.[13] But the statutory liability is clearly not one between the stockholder and the corporation.[14] The proposition relied upon is, however, only one aspect of a broader conception—that, in contemplation of law, a stockholder "is before the court in all the proceedings touching the body of which he is a member."[15] Under this rule, judgments against the corporation are conclusive against him;[16] likewise, it would follow, insolvency and dissolution proceedings.[17] The manifest reason of this principle applies to assessments upon the statutory liability of the stockholder, especially where they are only an incidental part of the receivership proceedings of which he is considered to have notice.

The result reached by the weight of authority does no substantial injustice. The order of assessment did not purport to be a judgment against anyone.[18] In an action for the amount, the defendant might show that he was not a stockholder, or held less stock than alleged, or might make any other defense personal to himself.[19] On the other hand, in no case could he collaterally question the validity of claims against the corporation adjudged valid,[16] except for fraud, for which he may still attack the order. His only loss is the opportunity to question the accuracy of the receiver's calculations. This he may do in a direct proceeding in the court of the corporation's domicile. Moreover, he is entitled to his share of any excess remaining after payment of debts. In view of these considerations and the practical necessity for a simple method for the enforcement of stockholders' liability, it would seem that the courts would even be justified in denying a technical application of the doctrine of *Pennoyer* v. *Neff*, were it necessary. Similar procedure has been supported in the case of mutual

[12]Howarth *v.* Lombard, *supra*; see Bernheimer *v.* Converse, *supra;* Converse *v.* Ayer, *supra*; Straw etc. Mfg. Co. *v.* Kilbourne etc. Co. (1900) 80 Minn. 125.

[13]Hawkins *v.* Glenn (1888) 131 U. S. 319; Fish *v.* Smith (1900) 73 Conn. 377.

[14]Cook, Corp. §218.

[15]Sanger *v.* Upton (1875) 91 U. S. 56 at 59; Hawkins *v.* Glenn, *supra*, at 329; Hancock Natl. Bk. *v.* Farnum (1900) 176 U. S. 640 at 641.

[16]Hancock Natl. Bk. *v.* Farnum, *supra;* Bissit *v.* Kentucky etc. Co. (1882) 15 Fed. 353, and note; Glenn *v.* Williams (1882) 60 Md. 93.

[17]Howarth *v.* Angle, *supra*, is apparently *contra*, but this point was unnecessary to the decision.

[18]Bernheimer *v.* Converse, *supra*, at 532; and see Gt. Western Tel. Co. *v.* Purdy (1895) 162 U. S. 329, at 336.

[19]Howarth *v.* Lombard, *supra*.

fire insurance companies under the laws of Massachusetts,[20] and in cases under the national banking act where the comptroller of the currency takes the place of the court, and, without the presence of the stockholders, makes a conclusive assessment.[21]

THE POSSIBILITY OF REVERTER.—Though conditional fees exist in South Carolina, where the Statute *De Donis* is not in force, and in copyholds in England, where it is inapplicable,[1] and determinable fees have, in some states, been judicially declared to exist,[2] there has been little attempt to define the nature of a possibility of reverter. Some courts apply the term possibility of reverter indiscriminately to a right of entry,[3] and cases of the latter sort as cited as authority in cases of the former.[4] Clearly, however, the two are distinct, though in many ways similarly treated. A right of entry, said to have been a species of tenure[5]—though without authority—is certainly not today so considered,[6] but is explained as a right reserved to the grantor to substitute himself in the feudal chain,[7] and requires entry to revest the fee.[8] Except in South Carolina, there is no indication in this country, even in Pennsylvania,[9] where *Quia Emptores* is probably not in force,[10] that a possibility of reverter is a kind of tenure. In South Carolina, this possibility has been compared to escheat,[11] but in the same the court asserts that it may be released. It is doubtful whether a release could operate to advance a tenant one step in the feudal chain—such a device, had it existed, would have made alienation common before *Quia Emptores*. There is no authority for maintaining that a State's right of escheat may be released. Cases apparently so holding,[12] in situations involving land held by aliens, seem to be cases of waivers of particular forfeitures rather than releases of the right of escheat. Escheat is further to be distinguished in that some formality is necessary to its complete operation.[13]

Whatever may have been its origin, however, the possibility of reverter is not an estate, and is devoid of most of the incidents of property. It is generally held to be neither alienable nor devisable,[14] originally because of the doctrine of maintenance, applicable as well to all possibilities as to choses in action.[15] *Sheetz* v. *Fitzwater*,[16] a Pennsylvania case *contra*, seems

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[20]Mass. St. of 1894 Ch. 522 §49; Commonwealth etc. Ins. Co. *v.* Wood (1898) 171 Mass. 484.

[21]U. S. Rev. St. §5243; Kennedy *v.* Gibson (1869) 8 Wall. 498; Casey *v.* Galli (1876) 94 U. S. 673.

[1]Gray, Perp. (2nd Ed.) § 313; Pemberton *v.* Barnes, L. R. [1899] 1 Ch. 544.

[2]Gray, *supra* § 38-40.

[3]Upington *v.* Corrigan (1896) 151 N. Y. 143; Brattle Sq. Ch. *v.* Grant (Mass. 1855) 3 Gray 142, 147-150.

[4]Presbyt. Ch. *v.* Venable (1896) 159 Ill. 215, citing Nicoll *v.* N. Y. & E. R. R. Co. (1854) 12 N. Y. 121.

[5]Adams *v.* Ore Co. (1880) 7 Fed. 634, 638.

[6]Doe d. Freeman *v.* Bateman (1818) 2 B. & Ald. 168.

[7]Gray, *supra*, § 31; Watkins, Descents 173.

[8]Atty. Genl. *v.* Merrimack Co. (Mass. 1860) 14 Gray 586, 611, 612.

[9]See Sheetz *v.* Fitzwater (1847) 5 Pa. St. 126.

[10]Cf. Ingersoll *v.* Sergeant (1836) 1 Whart. 337; Wallace v. Harmstad (1863) 44 Pa. St. 492; Gray, *supra*, § 26.

[11]Adams *v.* Chaplin (S. C. 1832) 1 Hill Eq. 265.

[12]Congr. Ch. *v.* Morris (1845) 8 Ala. 182; Comm. *v.* Heirs of Hanbury (Mass. 1825) 3 Pick. 224.

[13]2 Bl. Com. 244; Kelly's Lessee *v.* Greenfield (Md. 1785) 2 Harr. & M. 121.

[14]Adams *v.* Chaplin, *supra*; Presbyt. Ch. *v.* Venable, *supra*.

[15]Lampet's Case (1612) 10 Rep. 46; People *v.* Society (U. S. 1832) 2 Paine 545.

[16](1847) 5 Pa. St. 126; *accord*, Slegel *v.* Lauer (1892) 148 Pa. St. 236.